

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION**

SEARS, ROEBUCK & CO.¹

Employer

and

**Cases 7-RC-22912
7-RC-22916²**

**LOCAL 876, UNITED FOOD AND COMMERCIAL
WORKERS UNION**

Petitioner

APPEARANCES:

Richard Pincus, Attorney, of Chicago, Illinois, for the Employer.

William Karges, Attorney, of Southfield, Michigan, for the Petitioner.

DECISION AND DIRECTION OF ELECTIONS

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record ³ in this proceeding, the undersigned finds:

¹ The name of the Employer appears as amended at the hearing.

² Subsequent to the hearing in Case 7-RC-22912, the Petitioner filed Case 7-RC-22916, in which it seeks to represent a unit of Auto Center service technicians and customer service advisors employed by the Employer at its Harper Woods, Michigan facility. As the issue in Case 7-RC-22916 is identical to that presented in Case 7-RC-22912, the parties have executed, and I have approved, a Stipulation and Agreement to Waive Hearing in Case 7-RC-22916 and Consolidate and Be Bound By Proceeding In Case 7-RC-22912. Accordingly, my decision in Case 7-RC-22912 will determine an appropriate unit of employees at both the Employer's Ann Arbor and Harper Woods, Michigan facilities.

³ The Employer and Petitioner filed briefs, which were carefully considered.

1. The hearing officer's rulings are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

Overview

The Petitioner seeks to represent a unit of approximately 19 full-time and regular part-time customers service advisors (CSAs) and service technicians employed by the Employer at its Auto Center located at its Ann Arbor, Michigan facility; but excluding all managers, assistant managers, and guards and supervisors as defined in the Act. The Employer contends that the only appropriate unit should consist of all of its non-managerial retail employees employed at its Ann Arbor facility, which includes approximately 172 full-line⁴ and Auto Center employees. The Employer leases space to certain entities that provide such services as optical, watch repair, hearing aids, and photography. The parties stipulated that employees employed by these entities would not be included in any unit.

I find that the petitioned-for unit is an appropriate unit. Auto Center CSAs and service technicians share a sufficient community of interest between themselves and apart from the full-line employees to be an appropriate separate unit.

The Employer's Operations

The Employer is a New York corporation engaged in the retail sale of various goods and services at its facilities located throughout the United States. Its headquarters are in Hoffman Estates, Illinois. Its facility in Ann Arbor is located at, and structurally incorporated with, Briarwood Mall. It occupies approximately 95,000 square feet of space. The full-line store is identified by the Employer's corporate office as Store No. 1390. The full-line store contains retail floor space, office space, a warehouse/storage area, a merchandise pick-up area, and a break room intended for use by all employees.

⁴ The parties stipulated that the term full-line constitutes all retail operations of the Ann Arbor facility apart from the Auto Center.

The Employer's hours of operation for the full-line store are from 10 a.m. to 9 p.m. Monday through Friday; 8 a.m. to 9 p.m. on Saturdays; and 11 a.m. to 6 p.m. on Sundays.

Structurally, the Auto Center is divided into two areas: the sales floor and the back shop. The sales floor occupies about 1,700 square feet and contains automotive merchandise ranging from tires and batteries to windshield fluid and motor oil. The Auto Center is identified by the Employer's corporate office as a separate store, Store No. 6212. An aisle approximately eight feet wide separates the Auto Center sales floor from the full-line store's home improvement, and lawn and garden departments. During periods when the Auto Center is open for business and the full-line store is closed, a gate cordons off the Auto Center, preventing individuals from gaining access to the remainder of the store. The Auto Center's back shop or garage is separated from the sales floor by a sliding glass door. The back shop has a separate entrance and provides parking reserved for the cars of Auto Center customers, and a waiting room for those customers. It contains its own storage area, receiving area, locker/break room and office. The Auto Center's hours of operation are from 7:30 a.m. to 9 p.m. Monday through Saturday; and 11 a.m. to 6 p.m. on Sundays.

Supervision

Scott Phelps is the Employer's store manager. Phelps is responsible for the overall operations of the entire store, including the Auto Center. Reporting to him are four assistant managers (ASMs) and two managers. They include Aimee Lubanski, ASM, operations; Andy Betts, loss prevention manager; Anthony Harris, ASM Brand Central; Chad Coalmer, ASM home improvement; Chris Doyle, ASM softlines; and Frank Hilliard, automotive manager. Hilliard also answers to a district manager for the Automotive Department who, in turn, reports to a regional manager. The Auto Center is the only department over which a district manager is assigned. Under Hilliard is Bob Matota, assistant automotive manager. Under Lubanski, Harris, Coalmer, and Doyle are several lead employees. Teisha Clark is also considered a lead employee within "in store support," but she reports directly to Phelps.⁵

Labor Relations

All employees share many things in common regarding their employment with the Employer. As new hires, all are subjected to an initiation process coordinated through Lorainne Brown, human resources lead. They receive a standardized employee handbook and are subject to the rules set forth in the handbook, including the Employer's Code of Conduct, attendance policy, drug policy, and progressive discipline policy. All

⁵ The Employer asserts that the lead employees are supervisors under Section 2(11) of the Act. However, the record is insufficient to make a determination as to their status. Further, there are no lead employees in the Auto Center. Accordingly, I make no finding on whether lead employees are supervisors.

employees receive essentially the same benefits package and accrue the same vacation and personal time based on length of service. All employees receive 15-minute break periods and are required to take a 30-minute lunch period after five hours of work. All employees receive a 15% discount on soft line products (e.g., clothing) and a 10% discount on hard line products (e.g., tools, lawnmowers, gas grills).⁶ All employees are required to clock in by way of the Employer's storewide system of computer work stations, which are located within the various departments, including the Auto Center. All sales associates, including CSAs, are subject to a dress code that requires them to wear the same type and colored clothing, and to wear the same type of name badge. Finally, all employees are invited, but not required, to attend storewide meetings held approximately once a month.

Employee Classifications and Duties

Auto Center

The Auto Center employees are classified as working under the Sears Tire Group. CSAs and service technicians report directly to the auto service manager and assistant manager, who have an office located in the back shop. Frank Hilliard, the Auto Center manager, has the authority to hire CSAs and service technicians, and performs performance evaluations subject only to a cursory review by Phelps. Hilliard and Bob Matota, assistant manager, can grant vacation and personal time off to both CSAs and service technicians, but no other employees. Time off requests for CSAs and service technicians are not impacted by requests of employees from the full-line store. In the absence of both Hillard and Matota, a CSA is designated as customer service manager. All store employees are paid every two weeks. However, Auto Center employees are paid one week and all other employees are paid the other week. The cover of the Employer's handbook specifically notes that it is for full-line and automotive associates. In addition to the Employees' handbook, Auto Center employees are governed by a six page automotive policies supplement.

Customer Service Advisors

The Employer employs approximately eight CSAs who work in the sales area of the Auto Center. They sell merchandise and service in connection with automotive repair, including tires, batteries, shocks and struts, and brakes. Merchandise, such as battery chargers, windshield washer fluid, and motor oil, is also offered for sale in this area. CSAs receive an hourly rate of pay plus a commission on the products they sell. Their compensation ranges between \$9.83 and \$18.19 per hour. All CSAs receive Employer training specific to the automotive parts and service they sell.

⁶ Service technicians are afforded an additional 15% discount on tools.

CSAs work directly with customers. When customers bring their cars in for service, CSAs accompany them to their vehicles to make an initial assessment of the particular needs or problems, note the mileage and vehicle identification information, and then forward work orders containing information regarding the particular needs or problems to the service technicians. The service technicians review the work orders, examine the vehicles, alert the CSAs of additional or unforeseen complications or problems, and make recommendations to the CSAs regarding the parts and services needed for complete repair. The CSAs then explain to the customer the service technician's diagnosis and prepare an estimate based on the customer's determination. Service technicians occasionally assist CSAs in explaining their diagnosis to the customer. Once customers approve the work, CSAs retrieve any parts already in stock and order any necessary parts. The service technicians perform the work. Once the work is completed, CSAs contact the customer and secure payment.

In addition to their primary duties, CSAs assist service technicians in the unloading and storage of tires, batteries, and other automotive products that are delivered by vendors to the Auto Center receiving area. They also occasionally assist service technicians by pulling vehicles into the garage or assisting on a repair. For example, if no other service technician is available, a CSA, during a brake repair, might assist the service technician in the bleeding of the brake line by pumping the brake pedal.

CSAs also assist customers interested in purchasing off the shelf items, such as motor fluids and other automotive related products, by helping them find particular products. They ring up the sale of those products at the register located in the Auto Center. Because the Auto Center's computer system is specific to the Auto Center, customers cannot pay for non-automotive merchandise at the cash register in the Auto Center. CSAs are required to wear the same business casual attire and same styled name badges as other sales employees who work in other departments.

Service Technicians

The Employer employs approximately 11 service technicians. Service technicians are designated according to their skill level, from Level I possessing the least amount of skill through Level IV possessing the most skill.

There are currently five Level I technicians. They perform relatively uncomplicated tasks such as changing tires and batteries, balancing wheels, and performing oil changes. They require no previous experience, but are required to complete mandatory Employer on-line courses, and obtain Employer certification, specific to the services they perform, known as a Tech I core curriculum. For example, Level I technicians must receive Employer certification in the "Fundamentals for Tire

Service” within 60 days of their hire-in date. Level 1 technicians require no State certification.

There are three Level II technicians. In addition to the duties performed by Level I technicians, Level II technicians provide services such as front-end alignments, replacement of shock absorbers and struts, and exchanges of coolant. They must complete the Employer’s Tech I-II core curriculum, and work toward an ASE certification⁷ in electrical, and in steering and suspension. In addition to possessing Employer certification covering the various services they perform, Level II technicians must possess a Motor Vehicle Mechanic Certificate from the State of Michigan.

Level III and IV technicians, in addition to performing the duties of Level I and II technicians, provide air conditioning⁸ and brake service, and perform work on a car’s electrical system, like replacing a starter or alternator. Like Level II technicians, Level III and IV technicians must be working toward their ASE certification and be certified by both the Employer and the State in the specific work they perform. The Employer employs three Level III technicians and currently does not employ any Level IV technicians.

All service technicians are paid an hourly wage plus incentive. That is, they are paid an hourly wage rate which is dependent upon the service technician's level, length of service, and performance. Incentives are additional compensation related to the particular service they perform. For example, a technician installing new tires would receive a predetermined amount for that particular product in addition to his or her hourly rate. Their compensation ranges from \$9.83 to \$18.19 per hour.

The service technicians spend an overwhelming majority of their time in the back shop repairing vehicles. A locker/break room is located within the back shop containing a microwave oven, coffee maker, kitchen table, sink, shower, and an area where the Employer posts notices such as minimum wage and workers’ compensation laws. Service technicians provide most of their own tools, with the Employer providing certain air-powered tools. Service technicians, unlike other employees, are provided uniforms by the Employer. The uniforms include sewn-on patches bearing the technician's name.

⁷ ASE certification is a nationally recognized automotive certification. The Employer advertises that it employs service technicians possessing this certification.

⁸ Only one service technician is currently qualified to perform work related to air conditioning units.

Full-line Store

Consultive Selling Associates–Brand Central

The Employer employs approximately 25 to 30 consultive selling associates in the Brand Central department, which is comprised of the home appliance and home electronics departments. Employees in the Brand Central department report to Assistant Store Manager Anthony Harris. Like all employees, consultive selling associates in Brand Central are required to complete orientation and product-specific training through the Employer's intranet computer system.

Consultive selling associates in the home appliance department receive a "draw versus commission" form of compensation. The draw amount, a fixed weekly minimum, is paid only when their commissions on the products they sell fail to exceed the draw amount. Consultive selling associates in the home appliance department sell such products as dishwashers, water heaters and softeners, refrigerators, and ovens. In addition, they also sell installation services related to those products. Their compensation ranges from \$13.95 to \$27.48 per hour.

Consultive selling associates in the home electronics department receive an hourly rate of pay plus a commission, or a base plus commission, on the products they sell. They sell products such as televisions, cameras, camcorders, DVDs, and other consumer electronics products. Their compensation is between \$11.09 and \$17.16 per hour.

Consultive Selling Associates–Home Improvement

The Employer employs approximately 25 to 30 consultive selling associates in the home improvement department, which is comprised of hardware, paint, sporting goods, and lawn and garden departments. Employees in the home improvement department report to Assistant Store Manager Chad Coalmer. Under Coalmer are two lead employees, Lillian Cano, who is responsible for hardware and paint, and Hector Soto, who is responsible for sporting goods and lawn and garden. Like all employees, consultive selling associates in home improvement are required to complete orientation and product-specific training through the Employer's intranet computer system. All of the consultive selling associates in home improvement receive a base plus commission on the products they sell. Unlike sales employees in the Auto Center or in Brand Central, sales employees in home improvement can be assigned to any of the sub-departments. Their pay ranges from \$9.77 to \$19.05 per hour.

Consultive Selling Associates–Soft Lines

The Employer employs approximately 40 to 50 consultive selling associates in the soft lines department, which is comprised of men's, women's, and children's wearing apparel, footwear, fine jewelry, and home fashions. Employees in soft lines report to Assistant Store Manager Chris Doyle. Employees in footwear and jewelry receive a base plus commission on the products they sell, while the remaining employees receive an hourly rate of pay. Footwear and jewelry employees earn between \$8.15 and \$10.89 per hour. The others earn from \$6.50 to \$11 per hour.

In Store Support

The Employer employs approximately seven in-store marketing associates responsible for implementing in-store marketing initiatives, pricing, and re-ticketing items. In-store support employees report to Lead Teisha Clark. They earn between \$7.50 and \$12.10 per hour.

Cashiers

The Employer employs approximately 22 employees who staff the cash registers located at the four main cash register islands located in the full-line store. These employees are responsible for ringing up merchandise presented for purchase. Cashiers report to Lead Jessica Harris. Cashiers earn an hourly wage that ranges from \$6.90 to \$11.00.

Preventative Maintenance Technician

The Employer employs one individual as a preventative maintenance technician (PMT). He is responsible for inspecting merchandise returned by customers and making a determination as to whether such merchandise should be repaired by a repair technician, sent back to the vendor for credit, or destroyed. He performs minor repair work and is responsible for the assembly of merchandise, such as gas grills, lawn mowers and tractors, and treadmills. The PMT works out of a space within the Employer's general stockroom. The PMT earns an hourly wage that ranges from \$9.60 to \$15.80.

Receiving Associates

The Employer employs approximately 12 to 15 receiving associates, who report to Receiving Lead Brian Schneider. Receiving employees, who work in the general warehouse, assist customers with merchandise pick-up of large items such as tractors and lawn mowers; receive and stock merchandise shipped to the Ann Arbor store from the

Employer's distribution center and other vendors; and supply stock to the various departments throughout the full-line store. An unspecified number of these employees operate a propane-powered forklift, used in the performance of their duties. The Employer requires those who use the forklift to complete an Employer-certified training course and undergo an unspecified amount of on-the-job training with an already-certified associate. Receiving employees receive an hourly wage that ranges between \$7.40 and \$11.60.

Return To Vendor Associate

The Employer employs one return to vendor associate(RTV), who, like receiving associates, reports to Brian Schnieder. The RTV is responsible for returning merchandise to the Employer's centralized return center. He receives an hourly wage ranging from \$8.40 to \$13.10.

Loss Prevention Associates

The Employer employs approximately five loss prevention associates.⁹ Loss prevention associates report directly to the loss prevention manager, Andy Betts, and are responsible for internal and external theft detection and reduction. They are also responsible for the safety of customers and other employees. Loss prevention associates monitor the premises, including the Auto Center, with a closed-circuit monitoring system.

Employee Interaction and Interchange

CSAs and Service Technicians

There is significant interaction between CSAs and service technicians. As stated above, the services and products sold to customers start and end with CSAs, who write up the initial work orders, explain to customers the scope of services and parts required to complete the job, calculate the cost of the services and parts, order the parts needed to complete the services, and secure payment for services rendered. They essentially are the front-line employees. The service technicians examine the work orders and make determinations as to the extent of parts and services required to make an adequate repair. The service technicians do the repair work. They also, on occasion, assist CSAs in explaining to customers the extent of services required. Two CSAs, Eric Houston and Ken Dams, started out as service technicians.

⁹The parties stipulate, and I find, that loss prevention associates are excluded from any unit found to be appropriate.

The pay of CSAs and service technicians is linked to the work of both. For example, a customer may come in for new tires. The service technician's inspection may reveal the vehicle is out of alignment or has other front-end problems which caused damage to the tires the customer seeks to replace. The service technician may also uncover other, unrelated problems, like faulty brakes. These additional issues are brought to the attention of the CSA, who in turn advises the customer of the need for the additional work. Each service and product sold garners additional income for both CSAs and service technicians. Additionally, CSAs field complaints of customers dissatisfied with the service performed by the service technicians.

This interdependency requires that CSAs possess basic mechanical knowledge, as demonstrated by the Employer's requirement that they complete in-house training on services sold. Indeed, the corporate office employs individuals whose scopes of duties are limited to training that is specific to the Employer's auto centers. These employees' responsibilities encompass defined districts that include as many as 30 auto centers.

CSA and service technicians receive and store automotive merchandise in a storage area in the back shop. There is conflicting evidence as to where they enter the premises.¹⁰ They use the Automotive Center's computer workstation to punch in.¹¹ They primarily use the locker room located in the back shop as a break room. It is equipped with a microwave oven, coffee maker, kitchen table and sink. One of the two designated smoking areas is located directly outside the back shop. The other is located by the merchandise pick-up area, where the full-line employees enter and exit the store.

Auto Center employees and Full-Line employees

CSAs and service technicians essentially have no business interaction with other associates. None of the CSAs or service technicians perform work outside the Auto Center. No full-line employees perform work inside the Auto Center, with the exception of the loss prevention employees and the facility maintenance technician, who perform tasks related specifically to their job classifications. CSAs occasionally direct customers to sales associates in other areas of the store, particularly the lawn and garden, and hardware sections, which are located near the Auto Center. It is also not uncommon that customers waiting for their vehicles to be serviced ask CSAs for assistance regarding the location of a particular item not found in, or sold by, the Auto Center. CSAs are expected

¹⁰ Phelps testified that all employees are required to enter the premises at the merchandise pick-up area. However, a service technician testified that CSAs and service technicians usually enter the premises through the back shop door, and that in about 2001, the auto center manager at the time informed him that the rule restricting employees to entry only at the merchandise pickup area did not apply to CSAs and service technicians.

¹¹ Phelps testified that any employee can clock in at any workstation located throughout the store. A service technician testified that he and the other Auto Center employees use only the Auto Center computer work station to punch in, and that he was instructed by Matota not to use the full-line computers for that purpose.

to accommodate customers with information sufficient to address the customers' needs. Assistance of this type is less frequent among service technicians, who spend most of their working time in the back shop or at the Auto Center workstation assisting CSAs in explaining service and products to Auto Center customers. As with all employees, both CSAs and service technicians are required to assist any store customer who they might encounter while in the full-line store during break and lunch times.

Transfers

There is little employee transfer between the Auto Center and the full-line store. Robert Williams, a part-time CSA, transferred from the shoe department to the Auto Center 16 years ago. Roy Behm transferred from the Auto Center as a parts manager to take the return to vender position. Though the record is unclear exactly when this transfer occurred, Phelps testified that it occurred several years ago. The record contains no other examples of nonmanagerial employees transferring between the Auto Center and the full-line store.¹²

Analysis

It is well settled that in fashioning a bargaining unit the Board does not require “the most appropriate unit,” but only that the unit be “appropriate.” *Overnight Transportation Co.*, 322 NLRB 723 (1996); *Morand Bros. Beverage Co.*, 91 NLRB 409, 418 (1950), enfd. 190 F.2d 576 (7th Cir. 1951). The petitioned-for unit is a relevant consideration, but it is not dispositive. *Airco, Inc.*, 273 NLRB 348 (1984); *Marks Oxygen Co.*, 147 NLRB 228 (1964).

The Petitioner seeks a unit of employees employed in the Employer’s Auto Center, instead of a broader “wall to wall” unit, as proposed by the Employer. Where no bargaining history exists, the appropriateness of an overall unit does not establish that a smaller unit is inappropriate. *J.C. Penny Company, Inc. Store Number 1302*, 196 NLRB 708 (1972). Here, there is no bargaining history among the employees and no labor organization seeks to represent the employees on a broader basis. *Montgomery Ward & Co.*, 225 NLRB 547,548 (1976).

The Board’s decision in *Sears, Roebuck & Co.*, 261 NLRB 245 (1982) is controlling in this case. In *Sears*, the Petitioner sought to represent a unit of automotive center employees at the Employer’s Independence, Missouri store. The Regional Director dismissed the petition finding that the automotive center employees and other store employees constituted a single homogeneous grouping and the only appropriate unit appropriate for collective bargaining.

¹²The records shows that Store Manager Phelps was formerly an Auto Center manager and Auto Center Manager Hilliard was a lead in the hardware department.

The Board overruled the Regional Director's decision. In doing so, the Board noted the irrelevancy of whether another unit would also be appropriate, more appropriate, or even most appropriate. It concluded that the auto center employees had limited contact with other store employees, and were a functionally-integrated group working in a recognized product line under separate supervision sharing a community of interest that sufficiently differentiated them from the other store employees and functions.

In reaching its conclusion, the Board considered several factors that are also present in this case, including separate immediate supervision, different working hours, separate vacation schedules, separate and readily defined work area, and a separate group identity that arises from "working in a recognized product line separate and distinct from that of the retail store." *Id.* at 247. The Board also noted that "in contrast to the lack of integration between auto center and other store employees, employees in the auto center are greatly dependent upon one another for the continued operation of the center itself and for their individual livelihoods." *Id.* Finally, the Board noted the lack of any close relationship between the work of the auto center employees and any other group of employees at the retail store.

Here, the Auto Center is designated by the Employer as a separate store. It is the only department that has a district manager and dedicated trainer assigned to it. Its hours of operation are distinct from those of the full-line store. Its set-up is distinct from the rest of the store in two ways. First, the back shop contains its own entrance, receiving area, storage area, customer waiting area, office space, breakroom, and computer workstation. Second, the computer workstation, unlike all the workstations in the full-line store, cannot process nonautomotive merchandise, because the system is unique to the Auto Center. The services provided by CSAs and service technicians are interrelated and neither can perform their duties without the other. The cover of the Employer's handbook for associates even distinguishes between automotive and full-line associates.

The Board in *Sears* considered the factors common to all employees. There was a uniform hiring and orientation process, common benefits, common overall supervision by the store manager, a small degree of operational and functional interchange, and a degree of centralization rather remote from the individual employees' day-to-day work. The Board held that although such factors militated against finding the requested unit appropriate, they were greatly outweighed by the strong community of interest among the Auto Center employees. *Id.* The same is true here.

The Employer contends that the Board's decision in *Sears* is inapplicable because of changed circumstances. First, the Employer notes that it does not employ mechanics at the Ann Arbor store, like it did in Independence, Missouri, because it no longer provides exhaustive mechanical repairs. Although the level of skill required by service technicians at Ann Arbor to perform services now offered by the Employer may be less

extensive than those required by mechanics employed by the Independence auto center, all but the Level I service technicians are required to have mechanics' licenses issued by the State of Michigan. Moreover, the type of mechanical service considered by the Board in *Sears* was specifically the type of service provided by the Ann Arbor Auto Center today, including tire and battery installation, front-end alignments, and brake overhauls.

Second, the Employer argues that the Auto Center no longer has separate supervision or a separate group identity. While the Auto Center manager does report primarily to the store manager, he also still meets on a regular basis with the corporate district manager of the Employer's automotive department. The Auto Center is the only department that reports to a district manager. The Auto Center also still maintains a separate group identity.

The Employer also relies on a line of cases relating to warehouse employees and retail stores. Specifically, the Employer cites a recent case involving one of its facilities located in Fairbanks, Alaska, where the petitioner sought to carve out a unit of warehouse employees employed by the Employer out of a building located about 60 feet from the main store. In that case, Case 19-RC-14141, the Regional Director found that a separate unit of warehousing employees was inappropriate because none of the three criteria set forth in *A. Harris & Co.*, 116 NLRB 1628 1956), was met. In *A. Harris*, the Board held that a separate unit of warehousing employees is appropriate only if: (a) the warehouse operation is geographically separate from the retail store; (b) there is no substantial integration among the warehouse employees and those engaged in other store functions; (c) there is separate supervision of the warehouse employees. Only where all three of these conditions are met will a separate warehouse unit be approved. See also, *Charrette Drafting Supplies*, 275 NLRB 1294 (1985).

The Auto Center is not a warehouse. Thus, *A. Harris & Co* is not applicable. In that regard, the *Sears* case was decided well after *A. Harris & Co.* and makes no reference to that case.

The Employer also references a decision involving the Employer issued in Cases 6-RC-7618, 6-RC-7659 in 1977. In that proceeding, the petitioners were the Retail Store Employees Union and the Teamsters. The Regional Director first concluded that a single-store unit, not a multi-store unit, was an appropriate unit. Next, the Regional Director determined that the Teamsters' petitioned-for unit was a warehouse-type unit and, pursuant to *A. Harris*, supra, dismissed its petition. Finally, the Regional Director found that the only appropriate unit was a store-wide unit, not the less than store-wide unit sought by the Retail Store Employees Union.

That Regional Director's decision is inapposite for several reasons. First, neither union sought only the auto center employees. Second, both unions petitioned for only a portion of the auto center employees. They excluded the mechanics and floor men.

Third, this 1977 decision predated the Board decision in *Sears*, which was decided in 1982.

Accordingly, I find that the employees in the units proposed by the Petitioner show a sufficient community of interest between themselves and apart from the other store employees to be appropriate separate units.¹³

5. For the above reasons, and based on the record as a whole, I find the following employees constitute units appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time Auto Center customer service advisors and service technicians employed by the Employer at its facility located at 900 Briarwood Circle, Ann Arbor, Michigan; but excluding managers, assistant managers, confidential employees, loss prevention associates, guards and supervisors as defined in the Act, and all other employees.

All full-time and regular part-time Auto Center customer service advisors and service technicians employed by the Employer at its facility located at 18000 Vernier Avenue, Harper Woods, Michigan; but excluding managers, assistant managers, confidential employees, loss prevention associates, guards and supervisors as defined in the Act, and all other employees.

Dated at Detroit, Michigan, this 16th day of September 2005.

(SEAL)

/s/ Stephen M. Glasser
Stephen M. Glasser, Regional Director
National Labor Relations Board – Region 7
Patrick V. McNamara Federal Building
477 Michigan Avenue – Room 300
Detroit, Michigan 48226

¹³ Based on the stipulation referenced in footnote 2, my unit findings apply to both the Employer's Ann Arbor and Harper Woods stores.

DIRECTION OF ELECTIONS

Elections by secret ballot shall be conducted under the direction and supervision of this office among the employees in the unit(s) found appropriate at the time and place set forth in the notices of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those employees in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such a strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Employees who are otherwise eligible but who are in the military service of the United States may vote if they appear in person at the polls. Ineligible to vote are 1) employees who quit or are discharged for cause after the designated payroll period for eligibility, 2) employees engaged in a strike, who have quit or been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and 3) employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by:

Local 876, United Food and Commercial Workers Union

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the elections should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that **within 7 days** of the date of this Decision, **2** copies of an election eligibility list for each unit, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the lists available to all parties to the elections. The lists must be of sufficient clarity to be clearly legible. The lists may be submitted by facsimile or E-mail transmission, in which case only one copy need be submitted. In order to be timely filed, such lists must be received in the **DETROIT REGIONAL OFFICE** on or before **September 23, 2005**. No extension of time to file these lists shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court, 1099 14th Street N.W., Washington D.C. 20570**. This request must be received by the Board in Washington by **September 30, 2005**.

POSTING OF ELECTION NOTICES

a. Employers shall post copies of the Board's official Notices of Election in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the elections. In elections involving mail ballots, the election shall be deemed to have commenced the day the ballots are deposited by the Regional Office in the mail. In all cases, the notices shall remain posted until the end of the election.

The term "working day" shall mean an entire 24-hour period excluding Saturday, Sundays, and holidays.

A party shall be estopped from objecting to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Office at least 5 days prior to the commencement of the election that it has not received copies of the election notice. */

Failure to post the election notices as required herein shall be grounds for setting aside the elections whenever proper and timely objections are filed under the provisions of Section 102.69(a).

*/ Section 103.20 (c) of the Board's Rules is interpreted as requiring an employer to notify the Regional Office at least 5 full working days prior to 12:01 a.m. of the day of the election that it has not received copies of the election notice.

